



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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August 1, 2011

Dr. Roy E. Crabtree
Regional Administrator
Southeast Regional Office
National Oceanic and Atmospheric Administration
263 13th Avenue South
St. Petersburg, Florida 33701

Subject: EPA NEPA Review Comments on NOAA's DEIS for "Comprehensive Annual Catch Limit (ACL) Amendment for the South Atlantic Regions: Amendment 2 to the Fishery Management Plan for the Dolphin Wahoo Fishery; Amendment 2 to the Fishery Management Plan for Pelagic Sargassum Habitat; Amendment 5 to the Fishery Management Plan for the Golden Crab Fishery and Amendment 25 to the Fishery Management Plan for the Snapper Grouper Fishery, South Atlantic Region"; CEQ #20110187

Dear Dr. Crabtree:

The U.S. Environmental Protection Agency (EPA) has reviewed the subject National Oceanic and Atmospheric Administration (NOAA) Draft Environmental Impact Statement (DEIS) in accordance with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. EPA understands that the purpose for the Comprehensive Annual Catch Limit Amendment (Comprehensive ACL) for the South Atlantic Region is to implement measures expected to prevent overfishing and achieve Optimum Yield (OY) while minimizing, to the extent practicable, adverse social and economic effects. Long-term measures include the implementation of the following items: 1) changes to the snapper grouper fishery management unit, including the removal of some species and the development of species groups; 2) establish acceptable biological catch (ABC) control rules; 3) ACLs and annual catch targets (ACTs); 4) sector allocations; 5) accountability measures (AMs); and 6) management measures necessary to ensure mortality is at or below the annual limits and targets. In addition, EPA understands that the need for this action is to specify overfishing limits (OFLs), ACLs, and AMs, where needed to comply with Magnuson-Stevens Act requirements (MSA).¹

EPA has responsibility to review and comment on major Federal actions significantly affecting the quality of the human environment, including Fishery Management Plans (FMPs) and FMP Amendments (Amendments) as developed, approved, and implemented under the MSA where those Plans and Amendments are subject to the EIS requirement of

¹ p. IV

NEPA, but it should be clear that we defer to NOAA and the Councils as to the development of fishery statistics and the relative importance of the commercial and recreational fisheries for each species.

EPA appreciates that several alternatives for proposed actions were presented and that preferred alternatives were identified in the DEIS. In an effort to simplify our review we have organized our comments based on major actions being proposed, organization of the document, and Environmental Justice (EJ). Based on our review, we offer the following comments for the proposed actions covered within the DEIS.

Actions Being Proposed:

Removal of Species from the Snapper Grouper Fishery Management Unit (FMU)

Under the preferred alternative for Action 1 the Council proposes to remove species from the Snapper Grouper FMU. Currently, the Council manages 73 species in the Snapper Grouper FMU. Under the proposed action the Council would remove (39 or 40)² total species from this FMU. Multiple preferred alternatives are identified under Action 1. The preferred alternative would remove species based on certain criteria (Example – Criteria 1 - if 80% or greater of the landings are in state waters). First, it is somewhat unclear how these thresholds for removal of the species from the FMU were derived. EPA recommends that the FEIS better explain how these criteria for removal were developed. Second, EPA has expressed concern in past NEPA comment letters regarding the removal of species from FMUs, specifically by removing these species from the FMU, federal regulations and protections would no longer apply. It is EPA's understanding that once a species is removed from the FMU, data would no longer be collected on these species, yet the Council states that "Data collection would not be altered from current levels if species were removed from the FMU."³ EPA request clarification in the FEIS regarding data collection for species proposed for removal from the FMU. EPA also recommends that the Council include a discussion in the FEIS regarding the pros and cons of listing species proposed for removal from the FMU as ecosystem component species.

Reorganization of the Snapper Grouper Complex

EPA understands that under Action 2 the Council proposes to group species into four complexes. These groupings would be based on similarities in life history, catch statistics from commercial logbooks and observed data, recreational headboat logbooks and private/charter surveys, and fishery-independent MARMAP data. Complex ACLs would be developed for the grouped species and individual ACLs would be established for the remaining un-grouped species. EPA defers to the Council on organizing the Snapper Grouper complex into groupings for management.

Establishment of ABC, Allocations, ACLs, ACTs, and AMs for Snapper Grouper, Dolphin Wahoo, and Golden Crab

² In the summary table provided on page S-5 it appears that 39 species are being proposed for removal from the FMU, but the text on (p. 20) indicates that 40 species will be removed from the Snapper Grouper FMU. Please clarify in the FEIS.

³ p. 20

EPA defers to the Council for setting the ABCs, Allocations, ACL, ACTs, and Accountability Measures for the Snapper Grouper Complex, Dolphin Wahoo, and the Golden Crab. As stated earlier, EPA generally defers to NOAA and the Councils as to the development of fishery statistics and the relative importance of the commercial and recreational fisheries for each species.

Organization of the Document:

EPA notes that the Council has selected multiple preferred alternatives for several of the proposed actions and several of the alternatives have multiple sub-alternatives. This structure, when used to describe the potential impact of alternatives, proves to be very difficult to decipher and understand what the Council is proposing and what has been identified as the preferred alternative. As EPA has noted in past NEPA comment letters, we recommend that when multiple preferred alternatives are being proposed and it is the intention of the Council that all of them will be selected, then the multiple preferred alternatives should be combined into one preferred alternative for that specific action.

The DEIS main document discusses 31 actions associated with the Snapper Grouper, Dolphin Wahoo, and Golden Crab FMPs, yet the summary section (p. S-1 thru S-22) is structured around the preferred alternatives and proposed changes to Species Compositions, Acceptable Biological Catch, Allocations, Annual Catch Limits, Annual Catch Targets, and Accountability Measures. EPA understands that both the main document and summary section are conveying the same information, but we are concerned that not using a consistent format is confusing to the reader. EPA recommends that either the summary section or main document be restructured in the FEIS following a consistent format (example: summary addressing each action individually). In a recent NOAA DEIS which EPA Region 4 reviewed, Amendment 10 Spiny Lobster FMP, the Council provided a clear description (in the summary section) of all proposed actions, all alternatives considered, the preferred alternatives, and an analysis of the potential impacts to the biological, social, economic, and administrative environments. This level of information is missing in the summary for the Comprehensive ACL DEIS. In addition, EPA notes that the Snapper Grouper complex 2 and 4 are not are not labeled in the summary section.

Demographics/Social Vulnerability:

EPA appreciates the Council's efforts to evaluate potential environmental justice issues posed by the actions presented under the Comprehensive ACL. The Council calculated a Social Vulnerability Index (SoVI) to better understand how places that are susceptible to coastal hazards might also exhibit vulnerabilities to social change or disruptions. EPA understands that the SoVI relies on census data from 2000.⁴ Although it is stated that the SoVI can "be interpreted as a general measure of vulnerability to other social disruptions, such as adverse regulatory change or manmade hazards,"⁵ EPA request clarification in the FEIS regarding how confident the Council is with respect to SoVI's ability to

⁴ p. 241

⁵ p. 241

measure the impact of regulatory change on impacted fishing communities. EPA continues to be concerned that the real impact of regulatory change on fishing communities, especially the low-income/minority fishing communities, is not being fully captured and explained. EPA applauds the Council's efforts to expand the SoVI to include fishing communities in the Southeast region, which may address our concerns.

Environmental Justice:

Even though the proposed Comprehensive ACL is being implemented for the sake of recovering the fishery, these actions can have societal effect on fishers. These affects can be equally or unequally distributed among fishers. It is stated in Section 3.8.8. that, "it is anticipated that the impacts of this amendment may affect communities with environmental justice concerns..."⁶ It is then stated that the impacts "should not discriminate against any group."⁷ While this may be true, EPA continues to be concerned that EJ fishers and communities may be impacted by these proposed actions and these impacts are not being adequately quantified. The Council has provided a process through the SoVI to identify vulnerable communities and potential EJ communities, but has not taken the analysis to the next step of identifying how the actions proposed under the Comprehensive ACL DEIS will impact these communities. EPA recommends future discussion and analysis be provided in the FEIS to discuss our concerns.

Public Participation:

It is important to incorporate and discuss the public participation activities related to EJ in the context of the proposed actions. There is no discussion in the scoping report related to EJ communities. Given that several coastal counties were identified as low-income and minority, the DEIS should include some discussion about the strategies used to meaningfully engage or provide outreach to these communities in the decision-making and assessment process. For example, EPA has recommended in past comment letters that the Council should target Hispanic communities with Spanish materials/translators during the public involvement process. In addition, it is unclear from the scoping report provided in Appendix K how many public meetings were held and if EJ communities were present at these public participation meetings. EPA recommends more EJ specific outreach efforts for these public participation opportunities

EPA DEIS Rating:

In summary, EPA's primary concerns are the proposed removal of species from the Snapper Grouper FMU, specifically how this will impact data collection for the removed species, and the Comprehensive ACL impact on EJ and low-income fishers. EPA generally supports NOAA and the Council on the Comprehensive ACL and gives deference to their fishery expertise. Therefore, EPA rates this DEIS as "LO" (Lack of Objections). Nevertheless, we request that NOAA and the Council directly respond to our comments in a dedicated section of the FEIS.

⁶ p. 293

⁷ p. 293

EPA appreciates the opportunity to review the DEIS. Should NOAA have questions regarding our comments on this DEIS, please feel free to contact Dan Holliman at 404/562-9531 or holliman.daniel@epa.gov and for EJ comments please contact Ntale Kajumba at 404/562-9620 or kajumba.ntale@epa.gov of my staff.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mueller", with a stylized flourish at the end.

Heinz J. Mueller
Chief, NEPA Program Office
Office of Policy and Management